

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:18-cr-00141-MR-WCM**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
FRANK MICHAEL LUCAS,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on the Defendant's letter, which the Court construes as a motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 [Doc. 30].

The Defendant Frank Michael Lewis pled guilty to one count of possession with intent to distribute a quantity of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). [Docs. 12, 15]. On November 21, 2018, the Court sentenced him to a term of 160 months' imprisonment. [Doc. 26].

The Defendant now moves for a reduction of his sentence pursuant to Part A of Amendment 821 to the United States Sentencing Guidelines. [Doc. 30].

At the time that the Defendant was sentenced, U.S.S.G. § 4A1.1 provided for the addition of two criminal history points if the defendant

committed the offense of conviction while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. U.S.S.G. § 4A1.1(d) (2019). Part A of Amendment 821, effective November 1, 2023, amended this provision. As revised, § 4A1.1 now provides for the addition of only one criminal history point and applies only to defendants with seven or more criminal history points who committed the offense of conviction while under a criminal justice sentence. U.S.S.G. § 4A1.1(e) (2023).

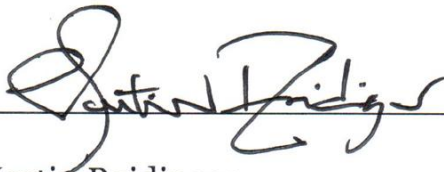
Here, the Defendant had a total of ten (10) criminal history points. [Doc. 23 at ¶ 70]. Two status points were added pursuant to § 4A1.1(d) because the Defendant committed the offense of conviction while under a criminal justice sentence, resulting in a total criminal history score of 12. [Id. at ¶¶ 71-72]. According to the sentencing table in U.S.S.G. Chapter 5, Part A, a criminal history score of 12 establishes a criminal history category of V. The revision to § 4A1.1 would result in only one (1) status point being added, resulting in a criminal history score of 11; however, a criminal history score of 11 still establishes a criminal history category of V. As such, Part A of Amendment 821 has no impact on the calculation of the Defendant's advisory guideline range.

For all of these reasons, the Defendant's motion is denied.

IT IS, THEREFORE, ORDERED that the Defendant's letter, which the Court construes as a motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 [Doc. 30], is **DENIED**.

IT IS SO ORDERED.

Signed: January 15, 2024



Martin Reidinger
Chief United States District Judge

